

## **§ 6-1452. Appeals taken from the county courts.**

(A) Appeals from County Court to District Court.

(1) Transcript of pleadings; how ordered.

(a) Appellant shall file a request for preparation of the transcript of pleadings at the time of filing the notice of appeal. The request shall designate the pleadings to be included in the transcript by listing the name of the pleading and its date of filing.

(b) The transcript shall contain the documents set out in § 6-1452(A)(2)(a)(i) through (v).

(2) Transcript of pleadings; content.

(a) The transcript of pleadings shall contain:

(i) In criminal cases, the complaint and arraignment sheet showing the plea entered. In civil cases, a copy of the last amended petition and last amended answer;

(ii) The judgment, decree, or final order sought to be reversed, vacated, or modified, and the county court's opinion, if any;

(iii) Copies of the notice of appeal and request for transcript, and copies of the request for bill of exceptions, and the application to proceed in forma pauperis and accompanying poverty affidavit if those documents were filed;

(iv) A copy of any bond or undertaking given in the county court; and

(v) Any other parts of the county court record which appellant believes to be necessary. Only those portions of the record which are material to the assignments of error may be requested. Requests must be made in the manner set out in § 6-1452(A)(1)(b).

(b) The county court shall, in the absence of a request for the inclusion of additional filings, prepare a transcript containing the documents set out in § 6-1452(A)(2)(a)(i) through (iv). In appeals to the Supreme Court, the notice of appeal, praecipes for transcript and bill of exceptions, and poverty affidavits shall not be included in the transcript, since they have been previously certified and sent to the Supreme Court.

(c) In appeals to the district court involving small claims cases, the county court shall certify the complete transcript of pleadings to the district court if the appellant is not represented by counsel.

(3) Transcript of pleadings; form.

(a) The transcript shall be photocopied. The image shall be permanent, black on a white background, and sharply and clearly legible. Each document in the transcript shall bear a clear and distinct stamp or writing showing the date the document was filed by the clerk of the

court.

(b) Transcripts shall be submitted on paper measuring 8½ x 11 inches. If the pleadings were filed in the county court on paper measuring 8½ x 14 inches, the entire transcript may be reproduced on 8½ x 14 inch paper. The paper shall be of standard 12- to 16-pound substance.

(c) The transcript shall be securely bound at the top center of each page with a fastener with prongs 2¾ inches apart on center. No pages in the transcript may be stapled.

(d) For appeals to the district court, the first two pages of the transcript shall be unnumbered and shall consist of (1) the clerk's certificate as set forth in Appendix 1 of these rules and (2) a properly prepared index. The index shall bear the caption of the case and the county court case identification number. The rest of the index shall be divided into three columns. The first column shall be used to number each item included in the transcript; the second column shall contain a brief description of the item; the third column shall show the transcript page number of the first page of the item described. Each page after the index shall be consecutively numbered. The number shall be centered at the bottom of each page.

(4) Payment for transcript.

(a) The party making the request shall pay the estimated cost of the transcript to the county court before preparation of the transcript may begin.

(b) An appeal may be dismissed for failure to make payment for the transcript except in cases where a poverty affidavit has been filed. If payment for the transcript has not been received within the time allowed under Neb. Rev. Stat. § 25-2731, and no poverty affidavit has been filed, the clerk of the county court shall send a certified copy of the notice of appeal to the clerk of the district court, together with a statement that the fee has not been paid.

(5) Supplemental transcript. After the original transcript is filed in the office of the clerk of the district court, any party may, without leave of court, request a supplemental transcript containing matters omitted from the original transcript and which are necessary to the proper presentation of the case in the district court.

(a) The request for a supplemental transcript shall be in writing and in the same form prescribed in § 6-1452(A)(1).

(b) Supplemental transcripts shall be filed within 10 days after the county court receives the request, unless the district court has extended the due date.

(c) Supplemental transcripts shall be in the form prescribed in § 6-1452(A)(3).

(d) No change in the original or supplemental transcript shall be made after filing, or papers added to or withdrawn from the transcript, without leave of the district court.

(6) Cases previously appealed. When a final order is appealed in a case which was previously appealed, the transcript should not contain pleadings already on file in the district court.

(7) Statement of errors. Within 10 days of the filing of the bill of exceptions in the district court, the appellant shall file with the district court a statement of errors, which shall consist of a separate, concise statement of each error a party contends was made by the trial court.

Each assignment of error shall be separately numbered and paragraphed. Consideration of the case will be limited to errors assigned and discussed. The district court may, at its option, notice a plain error not assigned. This rule shall not apply to small claims appeals.

(B) Bills of Exceptions.

(1) How ordered. An appellant may order a bill of exceptions by filing a request with the clerk of the county court at the time the notice of appeal is filed. The request shall specifically identify each portion of the evidence and exhibits offered at any hearing which the party appealing believes material to the issues to be presented for review.

(2) Preparation. The county court stenographer shall prepare only the portions of evidence specified in the request for preparation of the bill of exceptions. At the same time, the appellant shall serve a copy of the request upon all parties.

(3) Supplements. If the appellee believes additional evidence should be included in the bill of exceptions, the appellee may, within 10 days after service of the request for bill of exceptions filed by the appellant, file a supplemental request for preparation of a bill of exceptions with the clerk of the county court. At the same time, a copy of the supplemental request shall be served upon all parties. The supplemental request shall be processed in the same way as the initial request.

(4) Settlement, signature, and allowance. When the bill of exceptions has been prepared, it shall be reviewed by the county judge or court stenographer, as the county judge elects, to determine whether the bill of exceptions conforms to applicable rules and is an accurate transcription of the tape recording. The person who completes the review and finds the bill of exceptions acceptable shall sign a certificate to be included in the bill of exceptions certifying that it is an accurate transcription of the proceeding.

(5) Filing. The bill of exceptions shall be filed in the office of the clerk of the district court by a county court employee as soon as the certificate is signed.

(6) Relevance. The bill of exceptions shall contain only matters of evidence or exhibits which are necessary to decide the issues presented on appeal.

(7) Payment. Except in cases where payment of the cost of preparing the bill of exceptions will be paid by the state, county, or other governmental subdivision, the cost shall be estimated at the time the request is received. The estimate shall be given or mailed to the party making the request.

(a) The appellant shall deposit the amount of the estimated cost with the clerk of the county court within 14 days after receipt of the estimate. Preparation of the bill of exceptions will not begin until the payment of the estimate is received.

(b) If the appellant fails to pay the deposit on time, the clerk magistrate shall notify the court stenographer and the district court in writing that the deposit has not been made. The time allowed the court stenographer for preparation shall be stayed until the deposit has been made. Appellant's time shall not be stayed by failure to make the deposit on time.

(8) Preparation and delivery.

(a) The bill of exceptions shall be filed with the clerk of the district court as soon as possible.

The following time limits apply unless an extension of time is approved by the district court in accordance with these rules. The time period begins on the date the request is filed in the county court.

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Criminal trials	6 weeks
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Civil trials	6 weeks
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Preliminary hearings in felonies	6 weeks
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Guilty or nolo contendere pleas	3 weeks
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(b) If the bill of exceptions cannot be prepared within the time allowed by § 6-1452(B)(8)(a), the district court may grant additional time for preparation.

(i) The clerk magistrate or court stenographer shall file a request with the clerk of the district court for additional time at least 1 week prior to the date the bill of exceptions is due to be filed.

(ii) The request shall be in the form of a pleading, captioned and bearing the district court case number. The request shall specify the length of time requested for the extension and shall bear the signature of the clerk magistrate or court stenographer. A brief affidavit of the clerk magistrate or court stenographer shall accompany the request for extension of time and shall set forth the reasons why the bill of exceptions cannot be completed by the date due.

(iii) Copies of the request shall be served on all parties to the action or their attorneys at the time the request for extension of time is filed.

(iv) The district court shall rule upon the request as soon as possible. The clerk of the county court shall be notified of the decision as soon as possible, but not later than 2 business days after the decision.

(v) Requests for extension shall be allowed only upon a showing of good cause, and first extensions of time shall not be routinely granted.

(9) Notice of district court action. The clerk of the district court shall notify the clerk of the county court of action taken by the district court on the appeal as follows:

(a) Within 2 judicial days after the decision of the district court becomes final, the clerk of the district court shall issue a mandate and transmit the same to the clerk of the county court on the form prescribed by the Supreme Court together with a copy of the district court's decision.

(b) The following shall be the procedure in appeals to the Supreme Court from the district court:

(i) The clerk of the district court shall notify the clerk of the county court if any matter appealed from the county court is appealed to the Supreme Court. Such notice shall be sent to the county court within 2 days after the date the notice of appeal is filed in the district court.

(ii) The clerk of the district court shall notify the clerk of the county court of receipt of a

mandate from the Supreme Court within 2 days after the mandate is received by the district court.

(C) Direct Appeals from County Courts to the Court of Appeals or Supreme Court.

(1) Notice of appeal; requests to prepare record. The appellant's notice of appeal to the Court of Appeals or Supreme Court shall be filed with the clerk of the county court within the time established by Neb. Rev. Stat. § 25-1912.

(a) At the same time the notice of appeal is filed, the appellant shall file a request for preparation of the transcript of pleadings and may file a request for preparation of the bill of exceptions. Those requests shall be in the form prescribed in § 6-1452(A) and (B).

(b) The court stenographer shall commence preparation of the bill of exceptions when notified to do so by counsel for the appellant. The time limits for preparation of the bill of exceptions contained in § 6-1452(B)(8)(a) shall apply, and the time shall begin from the date the notice of appeal is filed.

(c) The party requesting the preparation of the bill of exceptions may, at any time before the bill of exceptions is completed by the court stenographer, file with the clerk of the county court and serve upon the court stenographer a statement advising the court stenographer that settlement has been reached. Upon receipt of such statement, the court stenographer shall cease any further work upon the bill of exceptions. The county court shall be entitled to payment by the party ordering such bill of exceptions for the work performed up to the time that such notice was served upon the court stenographer, and rules with regard to payment of the fees to the county court for the bill of exceptions, as otherwise provided herein, shall apply.

(d) The court stenographer shall file the completed bill of exceptions with the clerk magistrate of the county court, who shall notify all parties and the Clerk of the Supreme Court and Court of Appeals of the filing.

(2) Payment of filing fee. The filing fee in the Court of Appeals or Supreme Court set by Neb. Rev. Stat. § 33-103 shall be first deposited with the clerk of the county court, who shall record receipt of the fee. The clerk of the county court may then write a check to the Clerk of the Supreme Court and Court of Appeals for the docket fee. If the county is to pay the fee (filing in forma pauperis), then the docket fee is not prepaid.

(3) Filing notice of appeal with the Court of Appeals or Supreme Court. The clerk of the county court shall, within 2 business days of receipt of a notice of appeal to the appellate court, send the following to the Clerk of the Supreme Court and Court of Appeals:

(a) A copy of the notice of appeal.

(b) The request for preparation of the transcript of pleadings.

(c) The request for preparation of the bill of exceptions (if filed).

(d) The clerk's certificate, set forth in Appendix 2 of these rules, which shall contain the following information:

(i) The caption of the case, including the names and adversary relationships of all the parties as the case was filed;

(ii) The name, address, city, state, zip code, telephone number, and Nebraska attorney identification number of each principal Nebraska attorney, and the name of the party or parties the attorney represents; or, if a party or parties represent themselves, the above information except for the identification number.

(iii) The date the notice of appeal was filed and the date the docket fee was paid.

(e) The court's check for the docket fee, or the application to proceed in forma pauperis and a poverty affidavit if the filing is in forma pauperis. If the State is prosecuting the appeal, no other notice is required.

(4) Processing appeals in the Court of Appeals or Supreme Court. Appeals from the county court will be processed in the same manner as other appeals. The Supreme Court and Court of Appeals Rules of Practice and Procedure shall be followed in appeals from the county courts. The county court transcript shall be certified by the clerk as a true copy of the proceedings contained therein. See Appendix 3.

(5) Notification of decision. The Clerk of the Supreme Court and Court of Appeals shall issue a mandate in appeals from county courts as in other cases. The county court will be officially notified of the action of the appellate court through the mandate.

*Rule 52(A)(7) amended October 27, 1993; Rule 52(A)(3)(d) and (C)(3)(d) and (C)(4) amended April 13, 1994; Rule 52(C), (C)(1), (C)(1)(d), (C)(2), (C)(3), (C)(4), and (C)(5) amended June 2, 1994; Rule 52(C), (C)(3)(d), and (C)(4) amended January 31, 1996; Rule 52(C)(1)(c) amended September 17, 1997; Rule 52(A)(2)(a)(iii) and (C)(3)(e) amended October 14, 1999. Renumbered and codified as § 6-1452, effective July 18, 2008; §§ 6-1452(A)(4)(a) and (B)(7)(a) and (b) amended June 8, 2011; § 6-1452(C)(2) amended August 31, 2011.*

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